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**UNITED STATES DISTRICT COURT**

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**CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

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11 LISA LIBERI; LISA M. OSTELLA; GO ) Case No. 8:11-CV-00485-AG (AJW)  
 EXCEL GLOBAL; PHILIP J. BERG, ) Hon. Andrew Guilford  
 12 ESQUIRE; and THE LAW OFFICES OF ) Courtroom 10D  
 PHILIP J. BERG, )

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Plaintiffs,

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vs.

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16 ORLY TAITZ, a/k/a DR. ORLY TAITZ; ) **MEMORANDUM OF EVIDENTIARY**  
 LAW OFFICES OF ORLY TAITZ; ) **OBJECTIONS BY DEFENDANT,**  
 ORLY TAITZ, INC.; DEFEND OUR ) **YOSEF TAITZ, TO DECLARATION**  
 17 FREEDOMS FOUNDATIONS, INC.; ) **OF PHILIP J. BERG, ESQ.**  
 NEIL SANKEY; SANKEY )

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19 INVESTIGATIONS, INC; TODD ) **[FILED CONCURRENTLY WITH**  
 SANKEY; THE SANKEY FIRM, INC.; ) **DEFENDANT'S REPLY MPA**  
 REED ELSEVIER, INC.; LEXISNEXIS ) **REGARDING HIS MOTION TO**  
 GROUP, INC., a Division of Reed ) **DISMISS PLAINTIFFS' FIRST**  
 Elsevier, Inc.; LEXISNEXIS RISK AND ) **AMENDED COMPLAINT]**

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21 INFORMATION ANALYTICS ) **Date: August 29, 2011**  
 GROUP, INC.; LEXISNEXIS SEISINT, ) **Time: 10:00 a.m.**  
 INC. d/b/a ACCURINT, a Division of ) **Place: Courtroom 10D**  
 22 Reed Elsevier, Inc.; LEXISNEXIS ) **Date Action Filed: May 4, 2009**  
 CHOICEPOINT, INC., a Division of ) **Discovery Cut-Off: March 5, 2012**  
 Reed Elsevier, Inc.; LEXISNEXIS ) **Final Pre-Trial Conf.: May 21, 2012**  
 23 SOLUTIONS, INC., a Division of ) **Trial Date: June 5, 2012**  
 Elsevier, Inc.; LEXISNEXIS RISK )

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25 ORACLE CORPORATION; )  
 DAYLIGHT CHEMICAL )  
 INFORMATION SYSTEMS, INC.; )  
 26 YOSEF TAITZ, individually, and as )  
 Owner / CEO of DAYLIGHT )  
 27 CHEMICAL INFORMATION )  
 SYSTEMS, INC.; and DOES 1 through )  
 28 186, inclusive, )

Defendants.

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
RECORD:**

**PLEASE TAKE NOTICE** that Defendant, YOSEF TAITZ (“Moving Defendant”), submits the following evidentiary objections to the DECLARATION OF PHILIP J. BERG (“Declaration”) submitted with Plaintiffs’ Opposition to Moving Defendants’ Motion to Dismiss pursuant to Federal Rules of Civil Procedure (“FRCP”), Rule 12(b)(6) regarding Plaintiffs’ First Amended Complaint (“FAC”).

**I. GENERAL OBJECTIONS TO CONSIDERATION OF PHILIP J. BERG’S DECLARATION REGARDING MOVING DEFENDANTS’ FRCP RULE 12(b)(6) MOTION TO DISMISS**

Moving Defendant has filed an FRCP Rule 12(b)(6) Motion to dismiss. He has not filed a Motion for summary judgment. His Motion challenges the legal sufficiency of the FAC, based on its allegations shown on the “face” of the pleading. He does not rely on, nor submit evidence of, any matter extrinsic to the FAC.

Instead of arguing the legal sufficiency of the FAC in their Opposition, Plaintiffs, through the Declaration of Mr. Berg, rely on matters extraneous to the FAC. As a matter of law, Mr. Berg’s Declaration cannot be considered on Moving Defendants’ FRCP Rule 12(b)(6) Motion. Such Motion is limited to the “face” of the FAC and matters judicially noticed. FRCP Rule 12(b)(6). Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007). Szoke v. Carter, 165 F.R.D. 34, 36 (S.D.N.Y. 1996). Graehling v. Village of Lombard, 58 F.3d 295, 298 (7th Cir. 1995).

Moving Defendant therefore objects to Mr. Berg’s Declaration being considered in opposition to his Motion. Moving Defendant moves to strike such improper extrinsic evidence.

**II. SPECIFIC OBJECTIONS TO PHILIP J. BERG’S DECLARATION**

As stated, Mr. Berg’s Declaration cannot be considered herein. However, *if*

the Court does consider such matters, Moving Defendant submits the following specific evidentiary objections to it. Such objections are submitted with an express reservation of Moving Defendant's general objections to such declaration being considered, and without waiving such general objections. As shown below, such Declaration is devoid of any competent or admissible evidence.

**A. Objections to Declaration of Plaintiff, Philip J. Berg**

**EVIDENTIARY OBJECTIONS**

<b><u>DECLARATION OF</u></b>	<b><u>MOVING</u></b>	<b><u>COURT'S</u></b>
<b><u>PLAINTIFF, PHILIP J. BERG</u></b>	<b><u>DEFENDANT'S</u></b>	<b><u>RULING</u></b>
	<b><u>OBJECTIONS</u></b>	
1. "Mr. Taitz Motion to Dismiss is premature as to certain causes of actions outlined in Plaintiffs Response in Opposition to his Motion. Discovery has not commenced with Defendants Yosef Taitz, Oracle or Daylight Chemical Information Systems, Inc. ["Daylight"] as of this date." Declaration of Philip J. Berg, ¶ 3.	Irrelevant. Fed. R. Evid. ("FRE"), Rules 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____
2. "Once discovery commences, it is imperative for Plaintiffs to receive all the source codes used by Defendants Yosef Taitz, Oracle and Daylight on their products supplied to and used by the Reed Defendants and Defendant Intelius from the time	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq.	Sustained: ____ Overruled: ____

1	period of January 1, 2009 to	Argumentative.	
2	current.” Declaration of Philip J.		
3	Berg,¶ 4.		
4	3. “Electronic discovery is also	Irrelevant. FRE 401, 402.	Sustained: ____
5	imperative and Plaintiffs	Speculation. Lacks	Overruled: ____
6	anticipate the need for extensive	foundation. No showing of	
7	electronic discovery with these	personal knowledge of	
8	Defendants.” Declaration of	declarant. FRE 602.	
9	Philip J. Berg,¶ 5.	Hearsay. FRE 802 et seq.	
10		Inadmissible opinion	
11		testimony. FRE 701 et seq.	
12		Argumentative.	
13	4. “Defendant Yosef Taitz	Irrelevant. FRE 401, 402.	Sustained: ____
14	claims Plaintiffs First Amended	Speculation. Lacks	Overruled: ____
15	Complaint [“FAC”] language and	foundation. No showing of	
16	allegation are confusing, tenuous,	personal knowledge of	
17	and unintelligible. Mr. Taitz	declarant. FRE 602.	
18	asks what exactly is “cross site	Hearsay. FRE 802 et seq.	
19	scripting”, “Interface	Inadmissible opinion	
20	applications”, “remote	testimony. FRE 701 et seq.	
21	application execution”, etc. This	Assumes facts not in	
22	verbiage is located on Mr. Taitz	evidence, and no	
23	and his Corporation, Daylight’s	foundation regarding	
24	website located at	alleged meanings of “cross	
25	<a href="http://daylight.com">http://daylight.com</a> . In addition,	site scripting,” “Interface	
26	this same verbiage is used by Mr.	applications,” “remote	
27	Taitz in his and Daylight’s	application execution,” etc.	
28	product manuals which are on	Argumentative.	

1 2 3 4 5	file with this Court as Exhibits "141" through "144", docket entry numbers 190, 190-26, and 190-27." Declaration of Philip J. Berg, ¶ 6.		
6 7 8 9 10 11 12 13 14 15 16 17 18	5. "Mr. Taitz raises the issue of a Stipulated Agreement which was entered into with his attorney Brad S. Miller, Esquire, dismissing without prejudice, Mr. Taitz from the original lawsuit filed in Pennsylvania on May 4, 2009. Mr. Taitz claims that Plaintiffs had to seek leave to "join" him back into the current lawsuit. This is not completely true." Declaration of Philip J. Berg, ¶ 7.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay, multiple level hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____
19 20 21 22 23 24 25 26 27	6. "Mr. Taitz was originally named in Plaintiffs lawsuit regarding his wife, Orly Taitz's website/blog, <a href="http://drorly.blogspot.com">http://drorly.blogspot.com</a> , and the operation thereof." Declaration of Philip J. Berg, ¶ 8.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	7. “The allegations pending against Mr. Taitz in Plaintiffs FAC have nothing to do with <a href="http://drorly.blogspot.com">http://drorly.blogspot.com</a> , his wife’s website or anything pertaining to the allegations plead [sic] against him in Plaintiffs Original Complaint of May 4, 2009.” Declaration of Philip J. Berg, ¶ 9.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Assumes facts not in evidence, and no foundation regarding FAC having “nothing to do with <a href="http://drorly.blogspot.com">http://drorly.blogspot.com</a> ,” or Mr. Taitz’s “wife’s website” or “anything pertaining to the allegations pled against [Mr. Taitz] in Plaintiffs Original Complaint.”	Sustained: ____ Overruled: ____
20 21 22 23 24 25 26 27 28	8. “The causes of action and the facts supporting the causes of action in Plaintiffs FAC were not even discovered until early 2010, a year after the original Complaint was filed and the Stipulated Dismissal was agreed upon.” Declaration of Philip J. Berg, ¶ 10.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	9. "As clearly outlined in the Stipulated Agreement of May 28, 2009, dismissing Mr. Taitz from the original lawsuit in Pennsylvania, Plaintiffs were required to Seek Leave to join Mr. Taitz back into the lawsuit only if the causes of action or allegations were "arising out of the allegations' in the Complaint filed May 4, 2009". See Stipulation of May 28, 2009, pages 1-2, ¶ 2. The allegations and causes of action outlined in Plaintiffs FAC against Mr. Taitz are not "arising out of the allegations in the Complaint filed May 4, 2009"." Declaration of Philip J. Berg, ¶ 11.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay, multiple level hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____
20 21 22 23 24 25 26 27 28	10. "Defendant Yosef Taitz has spent a lot of time and pages in his Motion to Dismiss in attempts to confuse this Court and misstate what Plaintiffs FAC states and the actual allegations pending against him." Declaration of Philip J. Berg, ¶ 12.	Irrelevant. FRE 401, 402. Speculation. Lacks foundation. No showing of personal knowledge of declarant. FRE 602. Hearsay. FRE 802 et seq. Inadmissible opinion testimony. FRE 701 et seq. Argumentative.	Sustained: ____ Overruled: ____



1	11. “The reference Mr. Taitz	Irrelevant. FRE 401, 402.	Sustained: ____
2	made about Microsoft computers	Speculation. Lacks	Overruled: ____
3	in attempts to compare it to the	foundation. No showing of	
4	suit against him is beyond a	personal knowledge of	
5	stretch and completely	declarant. FRE 602.	
6	dishonest.”	Hearsay. FRE 802 et seq.	
7		Inadmissible opinion	
8		testimony. FRE 701 et seq.	
9		Argumentative.	
10	12. “It is outlined in Plaintiffs	Irrelevant. FRE 401, 402.	Sustained: ____
11	FAC that Mr. Taitz, through his	Speculation. Lacks	Overruled: ____
12	products, Daylight, and	foundation. No showing of	
13	Defendant Oracle, had access to	personal knowledge of	
14	the Reed Defendants and	declarant. FRE 602.	
15	Defendant Intelius’ databases	Hearsay. FRE 802 et seq.	
16	and servers, which stored	Inadmissible opinion	
17	individuals’ private data,	testimony. FRE 701 et seq.	
18	including that of Plaintiffs. Mr.	Assumes facts not in	
19	Taitz in turn accessed Plaintiffs	evidence and lacks	
20	private data and provided it to his	foundation regarding Mr.	
21	wife, Defendant Orly Taitz. Mr.	Taitz allegedly having	
22	Taitz’s wife, Defendant Orly	“access to the Reed	
23	Taitz used the private data	Defendants and Defendant	
24	obtained from Mr. Taitz to carry	Intelius’ databases and	
25	out her threats against the	servers, which stored	
26	Plaintiffs, including destroying	individuals’ private data,	
27	them. This case is not about	including that of Plaintiffs”	
28	hardware supplied to any of the	and that Mr. Taitz allegedly	



1 Defendants by Yosef Taitz,  
2 Defendants Daylight or Oracle.”  
3 Declaration of Philip J. Berg,¶  
4 14.

“accessed Plaintiffs private  
data and provided it to his  
wife, Defendant Orly Taitz”  
and that Orly Taitz  
allegedly “used the private  
data obtained from Mr.  
Taitz to carry out her  
threats against the  
Plaintiffs.” Argumentative.

11 DATED: August 15, 2011

**SCHUMANN, RALLO & ROSENBERG,  
LLP**

14 By: /s/ - Jeffrey P. Cunningham  
15 Kim Schumann, Esq.  
16 Jeffrey P. Cunningham, Esq.  
17 Peter Cook Esq.  
Attorneys for Defendant,  
YOSEF TAITZ